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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 LOOKSMART GROUP, INC.,

18 Plaintiffs,

19 v.

20 MICROSOFT CORPORATION

21 Defendant.

Case No. 3:17-cv-4709-JST

**DECLARATION OF ERIC J. ENGER IN
SUPPORT OF LOOKSMART'S
OPPOSITION TO MICROSOFT'S
MOTION TO STRIKE DR. PAZZANI'S
EXPERT REPORT RE INFRINGEMENT**

Date: August 8, 2019
Time: 2:00 pm
Place: Courtroom #9 (19th Fl.)
Judge: The Honorable Jon S. Tigar

1 I, Eric J. Enger, do hereby declare as follows:

2 1. I am an attorney at law licensed to practice in the State of Texas (admitted *pro hac*
3 *vice* in this case), and I am an attorney at the law firm of Heim, Payne & Chorush, LLP, counsel
4 for Plaintiff Looksmart Group, Inc. (“Looksmart”) in this action. I submit this declaration in
5 support of the LookSmart’s Opposition to Microsoft’s Motion to Strike Dr. Michael J. Pazzani’s
6 Expert Report, pursuant to Local Rule 7-5. I have personal knowledge of the facts recited below,
7 and they are true and correct and based upon my understanding. If called upon as a witness, I
8 could and would competently testify as stated herein.

9 2. On May 17, 2019, I sent Mr. Jason Wolff, Microsoft’s counsel, a detailed three-
10 page letter explaining why Microsoft’s “static rank” non-infringement defense was untimely. Ex.
11 CC (5/17/19 Enger Ltr.). The letter notified Microsoft that LookSmart would move to strike
12 Microsoft’s non-disclosed non-infringement defense regarding static rank, and requested an
13 immediate meet-and-confer. *Id.*

14 3. Mr. Wolff and I met-and-conferred four days later, on May 21, 2019. During that
15 meeting, I explained why Microsoft’s belated “static rank” non-infringement defense (among
16 others) was improper. In response, Mr. Wolff offered to withdraw the portion of its summary
17 judgment relating to the untimely “static rank” non-infringement defense, if LookSmart would
18 agree not to strike it. I agreed to present this offer to my client.

19 4. At the end of the meet-and-confer, Mr. Wolff told me that, if LookSmart moved to
20 strike its non-infringement defenses, Microsoft would move to strike Dr. Pazzani’s infringement
21 report. This caught me off-guard, as this was the first time that Microsoft had ever mentioned
22 striking Dr. Pazzani’s infringement report for exceeding the scope of LookSmart’s infringement
23 contentions. I asked whether Microsoft would preemptively move to strike Dr. Pazzani’s
24 infringement report before LookSmart moved to strike Microsoft’s belated non-infringement
25 defenses, to which Mr. Wolff responded “no.” But I never requested that Microsoft wait to strike
26 Dr. Pazzani’s infringement report until after LookSmart moved to strike Microsoft’s undisclosed
27 defenses.

1 5. The next day, on May 22, 2019, I sent Mr. Wolff another three-page letter further
2 explaining in detail why Microsoft's "intra-domain link" non-infringement defense was also
3 untimely, and that LookSmart would move to strike it, too. Ex. DD (5/22/19 Enger Ltr.).

4 6. Two weeks later, on June 4, 2019, LookSmart moved to strike Microsoft's belated
5 non-infringement defenses. ECF No. 130. Microsoft moved to strike Dr. Pazzani's report just two
6 days later.

7 7. Exhibit A to LookSmart's Opposition is a true and correct copy of an internal
8 Microsoft document titled "Index Serve—the Bing Search Engine," which Microsoft has marked
9 as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

10 8. Exhibit B to LookSmart's Opposition is a true and correct copy of an internal
11 Microsoft document titled "Index Serve Overview," which Microsoft has marked as "Highly
12 Confidential – Attorneys' Eyes Only" under the Protective Order.

13 9. Exhibit C to LookSmart's Opposition is a true and correct copy of the deposition of
14 Microsoft employee Junhua Want, which Microsoft has marked as "Highly Confidential –
15 Attorneys' Eyes Only" under the Protective Order.

16 10. Exhibit D to LookSmart's Opposition is a true and correct copy of the deposition of
17 Microsoft employee Junaid Ahmed, which Microsoft has marked as "Highly Confidential –
18 Attorneys' Eyes Only" under the Protective Order.

19 11. Exhibit E to LookSmart's Opposition is a true and correct copy of an internal
20 Microsoft document titled "Bing Web Index Generation," which Microsoft has marked as "Highly
21 Confidential – Attorneys' Eyes Only" under the Protective Order.

22 12. Exhibit F to LookSmart's Opposition is a true and correct copy of the deposition of
23 Microsoft employee Utkarsh Jain, which Microsoft has marked as "Highly Confidential –
24 Attorneys' Eyes Only" under the Protective Order.

25 13. Exhibit G to LookSmart's Opposition is a true and correct copy of the cover
26 pleading for LookSmart's initial infringement contentions, served February 14, 2018.

27 14. Exhibit H to LookSmart's Opposition is a true and correct copy of the claim chart

1 for LookSmart's amended infringement contentions, served May 18, 2018, containing information
2 which Microsoft has designated as "Highly Confidential – Attorneys' Eyes Only" under the
3 Protective Order.

4 15. Exhibit I to LookSmart's Opposition is a true and correct copy of an internal
5 Microsoft document titled "BlueWhale Design Review IndexGen," which Microsoft has marked
6 as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

7 16. Exhibit J to LookSmart's Opposition is a true and correct copy of an internal
8 Microsoft document titled "BlueWhale Design Deep Dive IndexGen," which Microsoft has
9 marked as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

10 17. Exhibit K to LookSmart's Opposition is a true and correct copy of an internal
11 Microsoft document titled "Blending Web Results for Superfresh," which Microsoft has marked
12 as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

13 18. Exhibit L to LookSmart's Opposition is a true and correct copy of an internal
14 Microsoft document titled "IndexGen Features Release Schedules," which Microsoft has marked
15 as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

16 19. Exhibit M to LookSmart's Opposition is a true and correct copy of LookSmart's
17 second set of interrogatories, which contains information that Microsoft has designated as "Highly
18 Confidential – Attorneys' Eyes Only" under the Protective Order.

19 20. Exhibit N to LookSmart's Opposition is a true and correct copy of Microsoft's
20 initial responses to LookSmart's second set of interrogatories, which contains information that
21 Microsoft has designated as "Highly Confidential – Attorneys' Eyes Only" under the Protective
22 Order.

23 21. Exhibit O to LookSmart's Opposition is a true and correct copy of LookSmart's
24 third requests for production of documents to Microsoft, which contains information that
25 Microsoft has designated as "Highly Confidential – Attorneys' Eyes Only" under the Protective
26 Order.

22. Exhibit P to LookSmart's Opposition is a true and correct copy of Microsoft's responses to LookSmart's third set of document requests, which contains information that Microsoft has designated as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

23. Exhibit Q to LookSmart's Opposition is a true and correct copy of an October 5, 2018 letter from myself to Mr. Jason Wolff, Microsoft's counsel, and which contains information that Microsoft has designated as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

24. Exhibit R to LookSmart's Opposition is a true and correct copy of Microsoft's supplemental response to LookSmart's interrogatory no. 10, which contains information that Microsoft has designated as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

25. Exhibit S to LookSmart's Opposition is a true and correct copy of LookSmart's Notice of Rule 30(b)(6) Deposition of Microsoft, which contains information that Microsoft has designated as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

26. Exhibit T to LookSmart's Opposition is a true and correct copy of the deposition of Microsoft employee Fang Liu, which Microsoft has marked as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

27. Exhibit U to LookSmart's Opposition is a true and correct copy of the deposition of Microsoft employee Michael Huang, which Microsoft has marked as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

28. Exhibit V to LookSmart's Opposition is a true and correct copy of the deposition of Microsoft employee Eric Shuai, which Microsoft has marked as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

29. Exhibit W to LookSmart's Opposition is a true and correct copy of the deposition of Microsoft employee William Ramsey, which Microsoft has marked as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

1 30. Exhibit X to LookSmart's Opposition is a true and correct copy of an internal
2 Microsoft document titled "Blue Whale Sailing Map," which Microsoft has marked as "Highly
3 Confidential – Attorneys' Eyes Only" under the Protective Order.

4 31. Exhibit Y to LookSmart's Opposition is a true and correct copy of an internal
5 Microsoft document titled "IndexGen V2 (Kiran)," which Microsoft has marked as "Highly
6 Confidential – Attorneys' Eyes Only" under the Protective Order.

7 32. Exhibit Z to LookSmart's Opposition is a true and correct copy of an internal
8 Microsoft document titled "Agenda, Bit Funnel 101," which Microsoft has marked as "Highly
9 Confidential – Attorneys' Eyes Only" under the Protective Order.

10 33. Exhibit AA to LookSmart's Opposition is a true and correct copy of an internal
11 Microsoft document titled "Blue Whale," which Microsoft has marked as "Highly Confidential –
12 Attorneys' Eyes Only" under the Protective Order.

13 34. Exhibit BB to LookSmart's Opposition is a true and correct copy of an internal
14 Microsoft document titled "BlueWhale—IndexServe Interface Proposal," which Microsoft has
15 marked as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order.

16 35. Exhibit CC to LookSmart's Opposition is a true and correct copy of a letter I sent
17 to Mr. Jason Wolff, Microsoft's counsel, on May 17, 2019 concerning Microsoft's untimely non-
18 infringement defenses, which arguably contains information Microsoft has designated "Highly
19 Confidential – Attorneys' Eyes Only" under the Protective Order..

20 36. Exhibit DD to LookSmart's Opposition is a true and correct copy of a letter I sent
21 to Mr. Jason Wolff, Microsoft's counsel, on May 22, 2019 concerning Microsoft's untimely non-
22 infringement defenses, which arguably contains information Microsoft has designated "Highly
23 Confidential – Attorneys' Eyes Only" under the Protective Order.

24 37. Exhibit EE to LookSmart's Opposition is a true and correct copy of an email string
25 between myself and Mr. Jason Wolff, Microsoft's counsel, from May 17, 2019 until May 24,
26 2019.

1 I declare under penalty of perjury under the laws of the State of California, that the
2 foregoing is true and correct and that this declaration is executed in Houston, Texas on June 20,
3 2019.

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5 By: /s/ Eric J. Enger
6 Eric J. Enger
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